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In the Supreme Court of the United States

OCTOBER TERM, 1985

HARRY H. KARMUN AND ALICE G. KARMUN, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioners seek review of the court of appeals' affirmance of a Tax Court determination that income derived from a reindeer enterprise conducted under the Reindeer Industry Act of 1937, 25 U.S.C. 500 *et seq.*, is not exempt from federal taxation.

1. The Reindeer Industry Act was enacted to promote the welfare of Alaskan natives through the development of a native-operated reindeer herding industry. 25 U.S.C. 500. During 1977 and 1978, Harry Karmun, an Alaskan native,[1] participated as a partner in a reindeer enterprise subject to the Act. The partnership managed a herd of approximately 2,000 reindeer that were grazed on public land through the use of grazing permits issued by the Secretary of the Interior. See 25 U.S.C. 500m.

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[1]The Act defines the term "natives of Alaska" as including Eskimos, Indians, or Aleuts of whole or part blood. 25 U.S.C. 500n.

Petitioners, Harry Karmun and his wife Alice, filed joint federal income tax returns for 1977 and 1978. They failed to include as part of their gross income Harry Karmun's annual distributive share of the partnership's profit from the sale of reindeer and reindeer products. Upon audit, the Commissioner determined that the partnership income should have been included in gross income for each year.

Petitioners sought a redetermination of the resulting tax deficiencies in the Tax Court, arguing that the Reindeer Industry Act exempts from taxation the income of an Alaskan native derived from a reindeer enterprise. The Tax Court sustained the Commissioner's determination, concluding that the Reindeer Industry Act does not provide for such an exemption (Pet. App. 1-23). The court of appeals affirmed (*id.* at 24-37). The court of appeals observed that "Indians are subject to federal income taxes, as are other citizens, unless an exemption from taxation can be found in the language of a Treaty or Act of Congress" (*id.* at 29, citations omitted). It agreed with the Tax Court that neither the language nor the purpose of the Reindeer Industry Act supported petitioners' claim to an exemption from federal tax (*id.* at 29-34).[2]

2. The court of appeals' decision is correct and is consistent with the decisions of this Court and other courts of appeals. Further review is not warranted.

a. The court of appeals and the Tax Court correctly held that petitioners' income from the reindeer enterprise was subject to federal taxation. These courts applied the settled

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[2]The court also rejected petitioners' other arguments (not renewed here) that (1) an exemption was provided by the contracts conveying the reindeer herd to petitioners from the government; (2) special weight should be accorded a Department of the Interior Solicitor's Opinion that this income was tax-exempt; and (3) the Commissioner had conceded this issue in Rev. Rul. 67-284, 1967-2 C.B. 55. Pet. App. 35-37.

principle that Indians are subject to taxation on the same basis as other taxpayers unless they are expressly exempted from such taxation by statute or treaty. *Mescalero Apache Tribe* v. *Jones*, 411 U.S. 145, 155-156 (1973); *Superintendent* v. *Commissioner*, 295 U.S. 418, 420-421 (1935); *Choteau* v. *Burnet*, 283 U.S. 691, 694, 696 (1931).

Neither the Reindeer Industry Act nor any other treaty or statute expressly exempts from taxation the income derived by Alaskan natives from the operation of reindeer herds. Indeed, petitioners do not argue to the contrary. Instead, they contend that the Reindeer Industry Act creates an exemption by implication (Pet. 18-36), drawing an analogy to this Court's construction of the General Allotment Act of 1887, 25 U.S.C. 331 *et seq.*, in *Squire* v. *Capoeman*, 351 U.S. 1 (1956). The court below properly rejected that argument.

The General Allotment Act guaranteed that lands allotted to the Indians and held in trust by the United States would eventually be delivered to them free and clear of all charges and incumbrances. 25 U.S.C. 348. The Act further provided that once the land was conveyed, "all restrictions as to sale, incumbrance, *or taxation* of said land shall be removed". 25 U.S.C. 349 (emphasis added). This Court, relying on the specific statutory language providing that the trust lands would be held free from encumbrances until conveyed, concluded that Congress intended to exempt allotted land from all taxes until such time as the fee interest would be transferred to the allottee. *Squire*, 351 U.S. at 7-8.[3]

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[3]Contrary to petitioners' suggestions (Pet. 11-18), it is not the "trust relationship" between the United States and the Indian Tribes or the "trust" status of the allotted land that creates the tax exemption; rather it is the language of the General Allotment Act, which expresses a congressional intent that allotted land be tax exempt. See *Squire*, 351 U.S. at 7-8. Thus, the fact that the United States shows special concern

In contrast, the Reindeer Industry Act contains no language comparable to the free-of-incumbrance language found in the General Allotment Act. Nor is there any other indication that Congress intended that profits from reindeer herding operations conducted pursuant to the Act would be tax-exempt. Moreover, the two Acts evince entirely different legislative purposes. The General Allotment Act was intended to benefit the individual Indian allottees by preserving their interests in the allotted land while preparing them for assimilation into American culture. See generally *F. Cohen, Handbook of Federal Indian Law* 127-143 (1982 ed.). As the Court noted in *Squire*, taxation would diminish the interests that Congress intended to preserve. 351 U.S. at 9-10. In contrast, the Reindeer Industry Act was intended to provide a continuing food source to Eskimos of northwestern Alaska through the establishment of a native-operated reindeer industry. See 25 U.S.C. 500; see also H.R. Rep. 1188, 75th Cong., 1st Sess. 3 (1937); S. Rep. 474, 75th Cong., 1st Sess. 4 (1937). As the court of appeals recognized (Pet. App. 34), federal taxation of profits derived from successful reindeer enterprises in no way undermines the purpose of the Act.[4]

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for Alaskan natives, see 25 U.S.C. 500, or might hold reindeer in trust for them, see 25 U.S.C. 500g, does not create a tax exemption; rather, one must examine the language of the Reindeer Industry Act for an expression of intent to grant a tax exemption.

[4]Petitioners err in relying (Pet. 26, 28) upon *Stevens* v. *Commissioner*, 452 F.2d 741 (9th Cir. 1971), *Big Eagle* v. *United States*, 300 F.2d 765 (Ct. Cl. 1962), and *Kirschling* v. *United States*, 746 F.2d 512 (9th Cir. 1984). Those cases deal with taxation of Indian income from lands allotted under statutes similar to the General Allotment Act, and are thus controlled by *Squire*. In contrast, the courts have consistently declined to interpret *Squire* as exempting from taxation income that is not directly derived from allotted land. See, *e.g.*, *Hoptowit* v. *Commissioner*, 709 F.2d 564 (9th Cir. 1983); *United States* v. *Anderson*, 625 F.2d 910 (9th Cir. 1980), cert. denied, 450 U.S. 920 (1981); *Jourdain* v. *Commissioner*, 617 F.2d 507 (8th Cir. 1980), cert. denied, 449 U.S. 839

b. There is no merit to petitioners' suggestion (Pet. 15-17) that *Squire* invests Indians with an implied exemption from federal income taxation. As noted above, this Court has long held, quite to the contrary, that Indians are subject to tax on the same basis as other taxpayers unless exempted by the provisions of a treaty or statute. *Mescalero Apache Tribe* v. *Jones*, 411 U.S. at 155-156; *Superintendent* v. *Commissioner*, 295 U.S. at 419-421; *Heiner* v. *Colonial Trust Co.*, 275 U.S. 232, 234-235 (1927). As the Court stated in *Choteau* v. *Burnet*, 283 U.S. at 696, "[t]he intent to exclude must be definitely expressed, where, as here, the general language of the Act laying the tax is broad enough to include the subject matter." The Court did not purport to overturn that settled principle in *Squire* v. *Capoeman, supra*. Indeed it expressly approved that rule (351 U.S. at 6), concluding, as discussed above, that the provisions of the General Allotment Act did demonstrate a congressional intent to exempt the income in question from tax.[5] Unlike the General Allotment Act, neither the Reindeer Industry Act nor any other applicable statute or treaty suggests that Congress intended to create an exemption for income

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(1980); *Critzer* v. *United States*, 597 F.2d 708 (Ct. Cl.), cert. denied, 444 U.S. 920 (1979); *Fry* v. *United States*, 557 F.2d 646 (9th Cir. 1977), cert. denied, 434 U.S. 1011 (1978); *Holt* v. *Commissioner*, 364 F.2d 38 (8th Cir. 1966), cert. denied, 386 U.S. 931 (1967); *Commissioner* v. *Walker*, 326 F.2d 261 (9th Cir. 1964); *Beams* v. *United States*, 294 F. Supp. 1218 (E.D. Okla. 1968), aff'd per curiam, 417 F.2d 197 (10th Cir. 1969).

[5]Petitioners mistakenly cite (Pet. 15-16) *McClanahan* v. *Arizona State Tax Commission*, 411 U.S. 164 (1973), and *Carpenter* v. *Shaw*, 280 U.S. 363 (1930), as instances where the express statutory exemption requirement has been rejected by this Court. *Carpenter* and *McClanahan* both involved treaties that the Court held were intended to provide exemption from state taxation.

derived from Alaskan natives' reindeer enterprises. Accordingly, the courts below properly held that petitioners' income was subject to federal tax.[6]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Acting Solicitor General

JULY 1985

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[6]Despite petitioners' representations (Pet. 11) that income from operating a reindeer herd has historically been exempt from tax, nothing in the record indicates how the instant petitioners or other reindeer herd owners have been taxed in prior years. The record is likewise bereft of any showing as to whether, if such income had not been taxed previously, the Internal Revenue Service had affirmatively agreed with the position taken by the petitioners or whether it had simply failed, for whatever reason, to discover or object to the nonreporting of this income. As we have noted (note 2, *supra*), petitioners no longer rely on any published ruling by the Commissioner.